



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GTE Government Systems Corporation

File: B-236739

Date: November 20, 1989

DIGEST

1. Where agency rebuts an issue raised in the initial protest, and the protester fails to respond to the agency's rebuttal in its comments to the agency report, the issue is deemed abandoned.
2. Protest that agency had insufficient justification for considering and evaluating option prices is denied where agency reasonably expects to buy sufficient option quantities to insure that awardee's offer will ultimately provide the lowest cost to the government.

DECISION

GTE Government Systems Corporation protests the award of a contract to Data Signal, Inc., under request for proposals (RFP) No. M67004-89-C-0092, issued by the Marine Corps Logistics Base, Albany, Georgia. GTE alleges that the awardee's proposal was unbalanced and also objects to the agency's evaluation of option prices in making its award.

We deny the protest.

On March 13, 1987, the agency issued the solicitation for production and delivery of the SB-3614 telephone switchboard, including parts kits and spare parts. As originally issued, the solicitation contemplated use of the two-step sealed bidding procedure, but because of deficiencies in the technical data package, the agency amended the solicitation in March 1988 to allow for a negotiated procurement. The RFP contained base and option quantity requirements. The RFP essentially provided for award to the low, technically acceptable offeror without evaluation of option quantities. In March 1989, the agency again revised the solicitation, incorporating additional requirements and adding a requirement to reverse engineer the switchboard and update the data package, particularly drawings; the revised solicitation

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expressly directed potential offerors to pro rate the cost of preparing drawings over the contract base period.

Two offerors--the protester and the awardee--submitted technically acceptable best and final offers (BAFOs) on May 4, 1989. Under the original evaluation scheme, the protester submitted the lower offer, but on July 17, the agency was directed by higher headquarters to amend the solicitation to provide for evaluation of options, in view of a strong demand for the item and a long history of exercising such options.

On August 4, 1989, the agency issued amendment No. 0015 to the RFP, adding to the solicitation the clause at Federal Acquisition Regulation (FAR) § 52.217-5 (FAC 84-37), providing for evaluation of option quantities and extending the date for receipt of BAFOs to August 14. By the revised closing date, neither offeror made any changes to its previous BAFO. On August 18, the agency awarded a contract to Data Signal as the low, technically acceptable offeror under the evaluation scheme contained in the amended solicitation; on August 28, GTE filed this protest, challenging the awardee's proposal as unbalanced, and later supplemented its protest to challenge the agency's decision to evaluate option quantities for award.

In its initial protest, GTE alleged that the awardee's offer was materially unbalanced between the basic and option quantities. In its report, the agency explained that the technical data package provided with the RFP was inadequate for production purposes; for that reason, the solicitation instructed offerors to include, in their base period prices, the costs of reverse engineering to produce an adequate data package. According to the agency, this cost and associated first article testing and data requirements account for the difference between the awardee's base period and option price. Apart from the cost of engineering, which is allocable to the base period, the agency states that the awardee's proposal is essentially level in price.

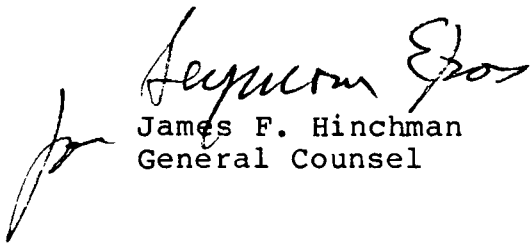
In responding to the agency report, the protester has offered nothing to refute the explanation and states that it "does not consider it necessary to dispute [these] facts." Under these circumstances, we deem the protester to have abandoned this protest ground. See East/West Indus., Inc., B-228301, Dec. 21, 1987, 87-2 CPD ¶ 611.

The protester also challenges the agency's evaluation of options, which resulted in the determination that award to Data Signal would result in the lowest overall cost to the government. Specifically, the protester challenges the

agency's justification for amending the contract to provide for evaluation of options.^{1/} The protester argues that the agency's reliance upon a history of having exercised options for the switchboard is misplaced because the base quantity consolidates all requirements for the 6 years preceding the "buy" and that with the SB-3614 nearing the end of its active life, past history is no basis for projecting future needs.

The agency replies that current demand for the switchboard is heavy and that there is a "strong probability" that it will exercise the option. In this regard, the RFP calls for a basic requirement of 66 switchboards, with an 100 percent option. The contracting officer has identified a documented need for 53 switchboards for the following fiscal year and for an additional 181 switchboards for foreign military sales. Thus, the record shows that the agency has good reason to believe that it will exercise the option.

The protest is denied.



James F. Hinchman
General Counsel

^{1/} According to the protester, it first learned the basis of this protest upon receiving the agency report.